

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 680**

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**Introduced by Senator Wolk**

February 22, 2013

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An act to amend Section 104556 of the Health and Safety Code, relating to tobacco settlement moneys.

LEGISLATIVE COUNSEL'S DIGEST

SB 680, as amended, Wolk. Tobacco *Master Settlement Fund*.  
*Agreement: qualified escrow funds.*

Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement (MSA), in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories.

Existing law requires a tobacco product manufacturer selling cigarettes to consumers within the state to either become a participating manufacturer, as defined, and generally perform its financial obligations under the MSA, or to place specified amounts into a qualified escrow fund, which are calculated on a per unit sold basis, as specified. For each tobacco product manufacturer that places amounts into a qualified escrow fund, existing law requires that manufacturer to certify to the Attorney General that the manufacturer has complied with ~~existing~~ *existing* law, and the failure to place all required funds into escrow subjects the manufacturer to civil penalties, as specified.

This bill would, for the purposes of ~~the~~ calculating the amount a tobacco product manufacturer is required to place in the qualified escrow ~~account~~ *fund*, revise the definition of "units sold" to specify that it ~~is~~ *means* the number of cigarettes sold to a consumer, regardless of whether



the state excise tax was *due or* collected, but would exclude, among other things, cigarettes sold at federal military installations.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 104556 of the Health and Safety Code  
2 is amended to read:  
3 104556. The definitions contained in this section shall govern  
4 the construction of this article.  
5 (a) “Adjusted for inflation” means increased in accordance with  
6 the formula for inflation adjustment set forth in Exhibit C to the  
7 Master Settlement Agreement.  
8 (b) “Affiliate” means a person who directly or indirectly owns  
9 or controls, is owned or controlled by, or is under common  
10 ownership or control with, another person. Solely for purposes of  
11 this definition, the terms “owns,” “is owned,” and “ownership”  
12 mean ownership of an equity interest, or the equivalent thereof,  
13 of 10 percent or more, and the term “person” means an individual,  
14 partnership, committee, association, corporation, or any other  
15 organization or group of persons.  
16 (c) “Allocable share” means allocable share as that term is  
17 defined in the Master Settlement Agreement.  
18 (d) “Cigarette” means any product that contains nicotine, is  
19 intended to be burned or heated under ordinary conditions of use,  
20 and consists of or contains (1) any roll of tobacco wrapped in paper  
21 or in any substance not containing tobacco; (2) tobacco, in any  
22 form, that is functional in the product, which because of its  
23 appearance, the type of tobacco used in the filler, or its packaging  
24 and labeling, is likely to be offered to, or purchased by, consumers  
25 as a cigarette; or (3) any roll of tobacco wrapped in any substance  
26 containing tobacco which, because of its appearance, the type of  
27 tobacco used in the filler, or its packaging and labeling, is likely  
28 to be offered to, or purchased by, consumers as a cigarette  
29 described in this section. “Cigarette” also includes “roll-your-own”  
30 tobacco, meaning any tobacco which, because of its appearance,  
31 type, packaging, or labeling is suitable for use and likely to be  
32 offered to, or purchased by, consumers as tobacco for making  
33 cigarettes. For purposes of this definition of “cigarette,” 0.09



1 ounces of “roll-your-own” tobacco shall constitute one individual  
2 “cigarette.”

3 (e) “Master Settlement Agreement” means the settlement  
4 agreement and related documents entered into on November 23,  
5 1998, by the state and leading United States tobacco product  
6 manufacturers.

7 (f) “Qualified escrow fund” means an escrow arrangement with  
8 a federally or state chartered financial institution having no  
9 affiliation with any tobacco product manufacturer and having assets  
10 of at least one billion dollars (\$1,000,000,000) where the  
11 arrangement requires that the financial institution hold the escrowed  
12 funds’ principal for the benefit of releasing parties and prohibits  
13 the tobacco product manufacturer placing the funds into escrow  
14 from using, accessing, or directing the use of the funds’ principal  
15 except as consistent with subdivision (b) of Section 104557.

16 (g) “Released claims” means released claims as that term is  
17 defined in the Master Settlement Agreement.

18 (h) “Releasing parties” means releasing parties as that term is  
19 defined in the Master Settlement Agreement.

20 (i) “Tobacco product manufacturer” means an entity that after  
21 the date of enactment of this article directly, and not exclusively  
22 through any affiliate:

23 (1) Manufactures cigarettes anywhere that the manufacturer  
24 intends to be sold in the United States, including cigarettes intended  
25 to be sold in the United States through an importer (except where  
26 the importer is an original participating manufacturer as that term  
27 is defined in the Master Settlement Agreement, that will be  
28 responsible for the payments under the Master Settlement  
29 Agreement with respect to such cigarettes as a result of the  
30 provisions of subsection II(mm) of the Master Settlement  
31 Agreement and that pays the taxes specified in subsection II(z) of  
32 the Master Settlement Agreement, and provided that the  
33 manufacturer of such cigarettes does not market or advertise such  
34 cigarettes in the United States); or

35 (2) Is the first purchaser anywhere for resale in the United States  
36 of cigarettes manufactured anywhere that the manufacturer does  
37 not intend to be sold in the United States; or

38 (3) Becomes a successor of an entity described in paragraph  
39 (1) or (2).



1 The term “tobacco product manufacturer” shall not include an  
2 affiliate of a tobacco product manufacturer unless the affiliate itself  
3 falls within any of paragraphs (1) to (3) of this subdivision.

4 (j) “Units sold” means the number of individual cigarettes sold  
5 to a consumer in the state by the applicable tobacco product  
6 manufacturer, whether directly or through a distributor, retailer,  
7 or similar intermediary or intermediaries, during the year in  
8 question, regardless of whether the state excise tax was *due or*  
9 collected. “Units sold” shall not include cigarettes sold on federal  
10 military installations, sold by a Native American tribe to a member  
11 of that tribe on that tribe’s land, or that are otherwise exempt from  
12 state excise tax pursuant to federal law. The State Board of  
13 Equalization shall adopt any regulations as are necessary to  
14 ascertain the amount of state excise tax paid on the cigarettes of  
15 the tobacco product manufacturer for each year.